Supreme Court, U.S.
FILED
00.272 AUG 18 2000
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No.

In The

Supreme Court of the United States

ROGER LIVERMAN, JR.,
Petitioner,

vs.

HENRY J. HYDE AND THE
COMMITTEE ON THE JUDICIARY OF THE U.S.
HOUSE OF REPRESENTATIVES,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals, Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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44pp

Questions Presented

The Legislative Department of the federal government has and performs many varied and distinct roles, which are multifaceted and distinct to the specific responsibilities granted to them. In fulfilling these many roles and responsibilities, questions arise that must be clarified and defined. These questions are of import and which should be resolved by this Court.

The question arising in this particular case is:

1. Does a Private Citizen seeking to recover damages from the Government in the nature of a First Amendment Right "to petition the Government for a redress of grievances" and Private Claim entitled to Fourteenth Amendment Right of Due Process Protections?

2. Did the inaction on part of the Committee on the Judiciary to address the petition before it constitute a violation of the "equal protection" clause under the Fourteenth Amendment when the Committee on the Judiciary addressed petitions presented after Plaintiff's was filed?

3. Can a private citizen call upon the Judicial Department to compel the Legislative Department to Act?

4. Whether, in the present, the Court may issue a Writ of Mandamus to Henry J. Hyde, Chairman, Committee on the Judiciary?

5. Did the inaction on part of the Committee on the Judiciary to address the petition before it constitute an "abridgment" to the right of a

private citizen to petition under the 1st Amendment?

6. Has the relationship between a private citizen and the Federal Government changed?

7. Did pro se Plaintiff in fact: "stated a claim upon which relief can be granted" satisfying Article III Case or Controversy requirement?

STATEMENTS OF INTERESTED PARTIES

There are no other known parties than those appearing on the cover of this Writ of Certiorari.

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Title 28 U.S.C. §1651

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Blackstone, vol. 3,p. 110

Federalist Papers No. 78

APPENDIX

Appendix A --- Order and Judgment of the United States Court of Appeals for the 10th Circuit decided July 26,2000.

Appendix B --- Order of the United States District Court for the District of Utah decided January 28,2000.

Appendix C --- Report and Recommendation by the U.S. Magistrate Judge Alba, United States District Court for the District of Utah issued January 15, 2000.

STATEMENT OF JURISDICTION

Congress, by a law passed at the very first session after the adoption of the constitution, vol. 1, p. 58, s. 13, have expressly given the Supreme Court the power of issuing writs of mandamus. The words are:

> "the Supreme Court shall also have appellate jurisdiction from the circuit courts, and court of the several states, in the cases hereinafter specially provided for, and shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States."

Again in Title 28 U.S.C. §1651. Writs. (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Under Title 28 U.S.C. § 1361. Action to compel an officer of the United States to perform his duty:

"The district courts shall have original jurisdiction of any action in the nature of mandamus to compel and officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff"

On August 23,1999, the pro se Plaintiff filed a Writ of Mandamus pursuant to Title 28 U.S.C. § 1361 in the United States District Court of Utah (Central Division) the case entitled, Roger Liverman, Jr., v. Henry J Hyde, et al, Civil No. 2:99CV656C. The Honorable Judge Tena Campbell issued an Order on January 28, 2000. Roger

Liverman, Jr., filed a pro se Notice of Appeal to the Tenth Circuit Court of Appeals from the Order of the District Court on February 2, 2000.

The Tenth Circuit Court of Appeals issued an Order and Judgment on July 26, 2000. Roger Liverman, Jr., petitioned this decision to the United States Supreme Court with a Pro Se Writ of Certiorari.

STATEMENT OF THE CASE

Introduction:
The Legislative Department of the federal government has and performs many varied and distinct roles, which are multifaceted and distinct to the specific responsibilities granted to them.

In Article 1 Section 8 of the U.S. Constitution are listed the many varied roles and responsibilities of the Legislative Department. I will mention just a few of them:

(1) The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

(7) To establish Post Offices and post roads;

(14) To make Rules for the Government and Regulation of the land and naval Forces;

(18) To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

As we can acknowledge in Article 1 Section 8 there are listed some 18 different and specific roles and duties given to the Legislative Department.

The case before this Court concerns the role and duties of the House of Representatives, Committee on the Judiciary in connection with its jurisdiction over

claims. It is **strictly** in this role that the Court is being asked to decide the questions presented.

"In connection with its jurisdiction over claims, the subcommittee considers private bills extending relief to individuals who have no other existing remedy. The right to petition for a redress of grievances is guaranteed by the first amendment to the Constitution. When called upon to decide whether relief should be granted to persons seeking redress of grievances, the subcommittee is guided by principles of equity and justice. The task of the subcommittee is to determine whether the equities and circumstances of a case create a moral obligation on the part of the Government to extend relief to an individual."

Excerpt from: "Rules of Procedure for the Consideration of Private Claims Bills"

Facts:
On September 22, 1997, a Petition to the Government of the United States of America for a Redress of Grievances & Petition for Private Claim was filed by the Office of the Clerk, U.S. House of Representatives, Washington D.C. 20515 and appeared on the Congressional Record on Page H7604 which stated:

"Under clause 1 of rule XXII, 21, the SPEAKER presented a petition of Roger Liverman, Jr., of Provo, Utah relative to a redress of grievances and petition for private claim, which was referred to the Committee on the Judiciary."

It is undisputed that the Committee has not responded

to Liverman's petition.[1]

Procedural History

On August 18,1998, Plaintiff filed a Petition to the Supreme Court of the United States, October Term on a Petition for the Extraordinary Writ of Mandamus. The Supreme Court of the United States returned Petition stating the Court needed a lower Court Decision.

As of November 16,1998, no time or date for hearing has been set to address the issues in the Petition to the Government of the United States of America for a Redress of Grievances & Petition for Private Claim.

On November 17,1998, Plaintiff filed an Extraordinary Writ of Mandamus styled as: Liverman v Hyde; et al Civil No: 98-CV-823 Assigned to: Judge Thomas Greene referred to Magistrate Judge Samuel Alba.

On February 9,1999, the Court heard arguments from Plaintiff and Counsel for the Defendant. Judge: Samuel Alba, Court Reporter: Electronic Tape #: 3143,3144 Log#: 6384-860 Court Deputy : Stephanie Hurst.

Upon suggestion of the Court, Pro Se Plaintiff voluntarily Dismissed the Writ of Mandamus filed February 10,1999, Order Granting Dismissal February 16,1999, and provided a copy of the Office of Oversight, Office of Inspector General, United States Department of Treasury report "Oversight Review 97-6-028" to the Committee on the Judiciary (that was provided by the Office of Oversight, Office of

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[1] U.S. Magistrate Report and Recommendation, Appendix C, page 1 Procedural History.

Inspector General, U.S. Dept. of Treasury in reference to a FOIA Civil Action: Liverman v Office of Oversight, Office of Inspector General, U.S. Department of Treasury, Case No: 2-98-CV-0717B).

The basis for the Court's Suggestion of Dismissal of the Writ of Mandamus was a letter of July 15,1998, the Committee on the Judiciary acknowledge receipt of the petition for redress filed with the House of Representatives and referred to the Committee on the Judiciary. It also stated that once the report was received, an evaluation will be made by the Committee on the petition.

As of August 22,1999, no notice or opportunity to be heard has been set to address the issues in the Petition to the Government of the United States of America for a Redress of Grievances & Petition for Private Claim.

On August 23,1999, the pro se Plaintiff filed a Writ of Mandamus under Title 28 U.S.C. §1361(1994), seeking to compel the Defendant (Henry J. Hyde and the Committee on the Judiciary, U.S. House of Representatives) to Act upon a Petition to the Government of the United States of America for a Redress of Grievances & Petition for Private Claim. To prevent further infringement on pro se Plaintiff's First and Fourteenth Amendment Right to be Heard and to Due Process by ordering the Defendant to set a time and date for the Petition to the Government of the United States of America for a Redress of Grievances & Petition for Private Claim to be heard and addressed in a timely manner and fashion.

On January 12, 2000, the United States Magistrate Judge issued a Report and Recommendation stating:

"Because Plaintiff does not have a Constitutional right to be heard by a member or committee of Congress, the court finds that plaintiff has simply failed to assert a claim that is actionable. Accordingly, IT IS HEREBY RECOMMENDED that Defendants Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure be granted, and that the case be dismissed without prejudice."

On January 20, 2000, Plaintiff filed an objection to Judge Alba's Report and Recommendation.

On January 27, 2000, the Honorable Judge Tena Campbell issued an Order stating:

> "The court agrees with Judge Alba's conclusion that plaintiff does not have a constitutional or statutory right to have his grievance heard by Congress ..... Accordingly, the court hereby adopts the United States Magistrate Judge's Report and Recommendation as the order of the Court. Defendant's Motion to Dismiss is Granted and all claims against defendants are Dismissed without prejudice."

On February 2, 2000, pro se Plaintiff filed a Notice of Appeal to the Tenth Circuit Court of Appeals from the Order of the District Court on February 2, 2000.

On July 26, 2000, Tenth Circuit Court of Appeals issued an Order Affirming the District Courts Ruling.

On August 18, 2000, Pro Se Petitioner filed this Writ of Certiorari with the United States Supreme Court.

REASONS FOR GRANTING THE WRIT

In the following pages I offer nothing more than simple facts, plain arguments, and common sense.

I. Does a Private Citizen seeking to recover damages from the Government in the nature of a First Amendment Right "to petition the Government for a redress of grievances" and Private Claim entitled to Fourteenth Amendment Right of Due Process Protections?

The Issue in question does not contravene any prohibitory words to be found in the United States Constitution. The only question is whether it is forbidden by some other invisible legal reasons or if it just because it has not ever been addressed.

If this is the case and Petitioner believes it to be so. It is imperative that the Court take a hard and cautious approach to the DECISION to be made. It is said that a Legislative Act cannot be valid if it infringes the Constitution, if that axiom is true . Then there are limits, therefore to the indiscriminate Power of the Legislative Branch specifically those of Chairman's of Committees to arbitrarily act or not to act as a whole.

The Courts have consistently upheld that the Right of Due Process is inviolable and a protected Constitutional Right specifically the 5th and 14th Amendment of the United States Constitution guarantees such protection.

Then does it not make Common Sense to extend these fundamental and basic principles of equity and justice to the case at hand.

Petitioner is entitled to DUE PROCESS on his Petition pending before the Committee on the Judiciary. Does not common sense dictate that the Petitioner is entitled to the same tenets that govern the other branches of government, i.e. Judicial and Executive Branches. These simple and basic tenets of:

> **Notice.** "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprize interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950).
>
> The notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest. Goldberg v. Kelly, 397 U.S. 254, 267-68 (1970).
>
> **Hearing.** "[S]ome form of hearing is required before an individual is finally deprived of a property [or liberty] interest." Mathews v. Eldridge, 424 U.S. 319, 333 (1976).
>
> "Parties whose rights are to be affected are entitled to be heard." Baldwin v. Hale, 68 U.S. (1 Wall.) 223, 233 (1863).
>
> The notice of hearing and the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U.S. 545, 552 (1965).
>
> "The constitutional right to be heard is a basic

aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment. . . ." Fuentes v. Shevin, 407 U.S. 67, 80-81 (1972). See Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 170-71 (1951) (Justice Frankfurter concurring)

The Court has in recent years developed a complex calculus to determine whether a hearing should precede the deprivation or whether a prompt post-deprivation hearing would be adequate. Generally, where the loss, even temporarily, would be severe or catastrophic, the hearing must come first; Goldberg v. Kelly, 397 U.S. 254 (1970); Sniadach v. Family Finance Corp., 395 U.S. 337 (1969),where a temporary deprivation would be less severe and the opposing interest is important, the hearing may come later, Arnett v. Kennedy, 416 U.S. 134 (1974); Mathews v. Eldridge, 424 U.S. 319 (1976); Barry v. Barchi, 443 U.S. 55 (1979) so long as it is promptly assured. Id. at 66. Too, the nature of what must be shown will be taken into account. Where the showing to be established is largely formal or subject to substantial documentary evidence, a post-termination hearing may suffice, Mathews v. Eldridge, 424 U.S. 319, 343-45 (1976); Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974); Mackey v. Montrym, 443 U.S. 1, 13-17 (1979); Barry v. Barchi, 443 U.S. 55, 65-66 (1979). while in cases in which the evidence is largely subjective and dependent upon the personal

appearance of the claimant the hearing must ordinarily precede the loss and the circumstance may require a more highly structured proceeding. Goldberg v. Kelly, 397 U.S. 254 (1970) Sometimes, because of the nature of the opposing interest and the circumstances of the determination, the hearing need involve only minimal formality. Goss v. Lopez, 419 U.S. 565 (1975) (temporary suspension of student from school). See also Board of Curators v. Horowitz, 435 U.S. 78 (1978)

The hearing requirement does not depend upon an advance showing that the claimant will prevail at such a hearing. Coe v. Armour Fertilizer Works, 237 U.S. 413, 424 (1915).

While written presentations may be acceptable in some situations, in others the issue of veracity may necessitate oral presentation or oral examination of witnesses, or the petitioner may not have the ability to present his case in writing. Goldberg v. Kelly, 397 U.S. 254, 266-67 (1970); Mathews v. Eldridge, 424 U.S. 319, 343-45 (1976). See also FCC v. WJR, 337 U.S. 265, 275-77 (1949)

Impartial Tribunal. Just as in criminal and quasi-criminal cases, Tumey v. Ohio, 273 U.S. 510 (1927); In re Murchison, 349 U.S. 133 (1955)."an impartial decision maker" is an "essential" right in civil proceedings as well. Goldberg v. Kelly, 397 U.S. 254, 271 (1970) "The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. . . . At the

same time, it preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." Marshall v. Jerrico, 446 U.S. 238, 242 (1980); Schweiker v. McClure, 456 U.S. 188, 195 (1982).

Confrontation and Cross-Examination. "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." Goldberg v. Kelly, 397 U.S. 254, 269 (1970). See also ICC v. Louisville & Nashville R.R., 227 U.S. 88, 93-94 (1913); Willner v. Committee on Character, 373 U.S. 96, 103-04 (1963). Cf. Sec. 7(c) of the Administrative Procedure Act, 5 U.S.C. Sec. 556(d).

Where the "evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealously," the individual's right to show that it is untrue depends on the rights of confrontation and cross-examination. "This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, . . . but also in all types of cases where administrative . . . actions were under scrutiny." Greene v. McElroy, 360 U.S. 474, 496-97 (1959). But see Richardson v. Perales, 402 U.S. 389 (1971) (where authors of documentary evidence are known to petitioner and he did not subpoena them, he may not

complain that agency relied on that evidence). Cf. Mathews v. Eldridge, 424 U.S. 319, 343-45 (1976)

Discovery. The Court has never directly confronted this issue, but in one case it did observe in dictum. "[W]here governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue."Greene v. McElroy, 360 U.S. 474, 496 (1959), quoted with approval in Goldberg v. Kelly, 397 U.S. 254, 270 (1970)

II. Did the inaction on part of the Committee on the Judiciary to address the petition before it constitute a violation of the "equal protection" clause under the Fourteenth Amendment when the Committee on the Judiciary addressed petitions presented after Plaintiff's was filed?

Is it not Common Sense to address matters before it (House of Representatives, Committee on the Judiciary) in connection with its jurisdiction over claims in the order in which they are filed. In order to preserve both the appearance and reality of fairness their needs be a system ensuring that all persons receive equal protection under the law.

III. Can a private citizen call upon the Judicial Department to compel the Legislative Department to Act?

The answer to this question is an unequivocal YES. This was discussed in the Federalist Papers No. 78

and upheld in Marbury v Madison (1803) upon which the Doctrine of Judicial Review was established and rests. To quote from the Federalist No. 78, it reads

"It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the Legislature, in order, among other things, to keep the latter within the limits assigned to their authority."

IV. Whether, in the present, the Court may issue a Writ of Mandamus to Henry J. Hyde, Chairman, Committee on the Judiciary?

Now before the Court is a WRIT OF MANDAMUS to compel the Honorable Henry J. Hyde, United States Representative for Illinois' 6th congressional district, in his capacity as Chairman, Committee on the Judiciary, United States House of Representatives, 106th Congress to give Plaintiff a notice of hearing and opportunity to be heard; addressing the Petition to the Government of the United States of America for Redress of Grievances & Petition for Private Claim currently pending before the Committee on the Judiciary in a timely manner and fashion.

Henry J, Hyde duties are of two kinds, and he exercises these functions in two distinct capacities, one as a United States Representative for Illinois' 6th congressional district and as the Chairman, Committee on the Judiciary, United States House of Representatives, 106th Congress.

In his first capacity, his duty is strictly to the citizens of the 6th congressional district of Illinois. Although, still a United States Representative, when he functions as the Chairman of the Committee on the Judiciary, his first duty is to the United States and its citizens.

It is in this role as Chairman, Committee on the Judiciary, he (Henry J. Hyde) is compellable by mandamus to perform his duty.

...Blackstone, vol. 3, p. 110, says that a writ of mandamus is:

> "a command issuing in the king's name from the court of king's bench, and directed to any person, corporation or inferior court, requiring them to do some particular thing therein specified, which appertains to their office and duty, and which the court has previously determined, or at least supposes, to be consonant to right and justice. It is a writ of a most extensively remedial nature, and issues in all cases where the party has a right to have any thing done, and has no other specific means of compelling its performance."

V. Did the inaction on part of the Committee on the Judiciary to address the petition before it constitute an "abridgment" to the right of a private citizen to petition under the 1st Amendment?

"A citizen may indeed petition the Legislative Department for a redress of a grievance." Roger Liverman, Jr., v Henry J Hyde..et al; Civil No.2:00CV-0089J.

The legal definition of the word redress is: (a) relief from distress, (b) a means of obtaining a remedy. How can this be accomplished if it can not be heard and addresses in a timely manner and fashion? It has been said:

> "That Justice Delayed is Justice Denied." Can it

not equally be said. "That a Right Delayed is a Right Denied"

For example: To give a man the right to vote, and then allowing obstacles to prevent him from voting is the same as not having that right..

The Constitution under the first amendment gives a citizen the right to petition the government for redress of grievances, but for the Committee on the Judiciary to refuse to address the Petition pending before it; is to say he has no right to be heard. It is the same as Abolishing the First Amendment Protection. Of all the Rights contained in the Bill of Rights, none is as important as "the right to petition for redress". For with out this right you can not protect the others.

VI. Has the relationship between a private citizen and the Federal Government changed?

The laws of every country must be analogous to some common principle. Through the American Revolution came the Declaration of Independence (1776) and then the Constitution of the United States of America (1789) a new idea was born, a new birth of freedom as exalted by Lincoln based on certain principles set forth; a new republic which was formed under a Constitution.

A Constitution is not a thing in name only, but in fact. It has not an ideal, but a real existence; and wherever it cannot be produced in a visible form, there is none. A constitution is a thing antecedent to a government, and a government is only the creature of the constitution.

The constitution of a country is not the act of its government, but of the people constituting its

government. It is the body of elements, to which you can refer, and quote article by article; and which contains the principles on which the government shall be established, the manner in which it shall be organized, the powers it shall have, the mode of elections, the duration of the Legislative bodies; the powers which the Executive part of government shall have; the powers which the Judiciary shall have; and in fine, everything that relates to the complete organization of a civil government, and the principles on which it shall act, and by which it shall be bound.

A constitution, therefore, is to a government what the laws made afterwards by the government are to a court of judicature. The court of judicature does not make the laws, neither can it altar them; it only acts in conformity to the laws made; and the government is in like manner governed by the constitution.

This is proven in Marbury v Madison (1803): "the Constitution is the Supreme and binding law."

There are (4) four basic fundamental branches of government in the Republic of the United States of America as set forth in the [limited Constitution][2] of the United States of America. The four branches in order of importance and in form are:

1. The People. (Citizens of the Nation)
2. The Three Coequal Branches:
    a)Legislative;
    b)Executive;
    c) Judicial.

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[2] By a limited Constitution, it is one which contains certain specified exceptions to the Authority of the separate departments. i.e. Executive, Legislative and Judicial. See Federalist Papers, Number 78 by Mr. Hamilton.

We can state emphatically that the People (citizens) of these United States are in fact Independent of and Superior to the other branches of government. That every citizen is a member of the Sovereignty, and as such, can acknowledge no personal subjection; and his or her obedience can be only to the laws and Constitution.

This is proven in both the Preamble of the Constitution of the United States of America. Where it states:

> "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

And again: This was upheld in the Supreme Court Decision, McCulloch v Maryland, (1819), which the Court held that:

> "From the Conventions the Constitution derives its whole authority. The government proceeds directly from the people; is "ordained and established" in name of the people; and is declared to be ordained, "in order to form a more perfect union, establish justice, insure domestic tranquility, and secure the blessings of liberty to themselves and posterity,". . . . But when, "in order to form a more perfect union," it was deemed necessary to change this alliance into an effective government, possessing great and sovereign powers, and acting directly on the people, the necessity of referring it to the people, and of deriving its powers directly from them, was felt an acknowledge by all.

> The government of the Union, (whatever may be the influence of this fact on the case,) is emphatically, and truly, a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit."

VII. Did pro se Plaintiff in fact: "stated a claim upon which relief can be granted" satisfying Article III Case or Controversy requirement?

A. Standard

The Court under Article III has jurisdiction to decide cases and controversies. A justiciable controversy is ... distinguished from a difference or dispute.... that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical states of facts. Aetna Life Insurance Co.v Haworth, 300 U.S. 227,240-241 (1937) (citations omitted).

To satisfy the Article III case-or-controversy requirement, a plaintiff must have standing. In order to establish standing, a plaintiff must demonstrate: [First,] an "injury in fact"-- an invasion of a legally-protected interest which is (a) concrete and particularized, ... Second ,there must be a casual connection between the injury and the conduct complained of ... Third, it must be likely, as opposed to merely speculative, that the injury will be redresses by a favorable decision. Lujan v Defenders of Wildlife,

504 U.S. 555, 560-61 (1992) (citations omitted).

Pro Se Petitioner feels that he has shown an established in his response to the previous questions that he has in fact stated:

That plaintiff does have standing, did in fact suffer an injury in fact, that being his Right to Due Process under provisions of the Constitution. Pro Se Petitioner did not foresee the events that led us to this juncture and most importantly that the Court's Decision could redress the situation favorable.

The Courts have consistently upheld that:

"The complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him relief," Hall v Bellmon, 935 F.2d 1106,1009 (10th Cir. 1991) (quoting Conley v. Gibson, 355 U.S. 41, 45-46. 78, S.Ct. 99, 2L.Ed.2d 80 (1957)

Furthermore, "[d]ismissal of a pro se complaint for failure to state a claim is proper only where [emphasis added] that the plaintiff cannot prevail on the facts alleged and it would be futile to give him an opportunity to amend." Perkins v Kansas Dept. of Corrections, 165 F.3d 803, 806 (10th Cir. 1999)

Where a complaint has been filed by a pro se litigant, the litigants "pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers," Id. (Quoting Hall, 935 F.2.d. at 1110). The Tenth Circuit has interpreted this rule to mean that if "the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's

failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity of pleading requirements." Hall, 935 F.2d.at 1110.

Conclusion

The United States Supreme Court has stated that:

> "If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality. . . . unless such adjudication is unavoidable. Spector Motor Service v McLaughlin, 323 U.S. 101, 105 (1944). It has long been the Court's considered practice not to decide abstract, hypothetical or contingent questions. . . or to decide any constitutional question in advance of necessity for its decision. . . or to formulate a rule of constitutional law broader than is required by the precise facts to which it is applied. . . or to decide any constitutional question except with reference to the particular facts to which is to be applied. Alabama State Federation of Labor v McAdory, 325 U.S. 450, 461 (1945) It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of a case. Burton v United States, 96 U.S. 283,295 (1905), Rescue Army v Municipal Court of Los Angeles, 331 U.S. 549,570, n.34 (1947)"

When this Court reflects on what that they are now called upon to decide. A question, which, in its consequences, must prove one of the most important, that ever engaged their attention, the propriety of their taking a very comprehensive, as well as a very serious, view of it, will be evident.

Nothing is more certain than the indispensable necessity of Government, and it is equally undeniable, that whenever and however it is instituted, the people must cede to it **some** of their natural rights, in order to vest it with requisite powers.

A citizen must not and can not be asked by its Government to acquiesce **all** of their natural rights and those rights held in trust and guaranteed in the Bill of Rights contained in the Constitution of these United States.

The questions before this Court is an Important Issue Which Should Be Resolved By This Court.

Respectfully Submitted,

Roger Liverman, Jr.
Pro Se Petitioner
380 N 1020 E #112
Provo, Utah 84606
(801) 371-6512

APPENDIX A -- ORDER AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT DECIDED JULY 26, 2000.

United States Court of Appeals for the Tenth Circuit
Decided July 26, 2000.

No. 00-4022

Roger Liverman, Jr.,
Plaintiff- Appellant

v

Henry J. Hyde and the
Committee on the Judiciary
of the U.S. House of Representatives
Defendants-Appellees

Order and Judgment[1]

Before **Baldock**, **Henry**, and **Lucero**, Circuit Judges

The plaintiff Roger Liverman, Jr. appeals the district court's order dismissing his petition for a writ of mandamus. In his petition, Mr. Liverman alleged that the defendants the Committee on the Judiciary of the United States House of Representatives and Henry J. Hyde, the Chairman of that Committee, violated his First Amendment right to petition the government for redress of grievances and his Fourteenth Amendment due process rights. According to Mr. Liverman, the defendants failed to schedule a hearing on the petition that he filed with the United States house of

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* This order and judgement is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments, nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Representatives on September 22, 1997. He requested the district court to order the defendants to set a hearing.[2]

Following the recommendation of the magistrate judge, the district court dismissed Mr. Liverman's petition for failure to state a claim upon which relief could be granted. Upon review of Mr. Liverman's mandamus petition and the parties' briefs, we agree with the reasoning of the magistrate judge and the district court. "The Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy . . . Absent statutory restrictions, the State must be free to consult or not consult whomever it pleases." Minnesota State Bd. for Community Colleges v Knight, 465 U.S. 271, 283-85 (1984). Although some of the authorities upon which Mr. Liverman relies suggest that some government agencies may be required to provide hearings in certain situations, those authorities involve citizens who had property or liberty interests at stake. See Aplt's Br. At 11-13 (citing, inter alia, Mathews v Eldridge, 424 U.S. 319 (1976) and Goldberg v Kelly, 397 U.S. 254 (1970)). That is not the case here.

Accordingly, the district court's order dismissing Mr. Liverman's petition for a writ of mandamus is AFFIRMED.[3]

Entered for the Court, Robert H. Henry
United States Circuit Judge

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[2]After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal, See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). This case is therefore ordered submitted without oral argument.

[3]In light of the issuance of this order and judgment, appellant's motion for immediate ruling is moot.

APPENDIX B –ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION DECIDED JANUARY 28, 2000.

In The United States District Court for the District of Utah, Central Division Decided January 28, 2000.
Case No. 2:99-CV-656C

Roger Liverman, Jr.,
Plaintiff

v

Henry J. Hyde and the
Committee on the Judiciary
of the U.S. House of Representatives
Defendants

Order

Plaintiff filed this action pursuant to 28 U.S.C.§ 1361, alleging that defendants violated plaintiff's First Amendment right to governmental redress of grievances and his Fourteenth Amendment Due Process right to be heard. The case was referred to United States Magistrate Judge Alba pursuant to 28 U.S.C.§ 636(b)(1)(B).

Defendants filed a motion to dismiss, and the matter was fully briefed. On January 12, 2000, Judge Alba issued a Report and Recommendation, recommending that defendants' motion to dismiss be granted. On January 20, 2000, plaintiff filed an objection to Judge Alba's Report and Recommendation.

The court has reviewed the file, Judge Alba's Report and Recommendation, and plaintiffs objections. The court agrees with Judge Alba's conclusion that plaintiff does not have a constitutional or statutory right to have his grievance heard by Congress. Further, the

evidence establishes that the materials and petition plaintiff submitted were referred to the House Committee on the Judiciary and that the Committee is evaluating plaintiff's claim.

Accordingly, the court hereby adopts the United States Magistrate Judge's Report and Recommendation as the order of the court. Defendant's motion to dismiss is GRANTED and all claims against defendants are DISMISSED without prejudice.

SO ORDERED this 27 day of January, 2000

BY THE COURT
"s/ Tena Campbell"
Tena Campbell
United States District Judge

APPENDIX C -- REPORT AND RECOMMENDATION, U.S. MAGISTRATE JUDGE FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION ISSUED JAN. 12, 2000.

In The United States District Court for the District of Utah, Central Division Decided January 28, 2000.
Case No. 2:99-CV-656C

Roger Liverman, Jr.,
Plaintiff

v

Henry J. Hyde and the
Committee on the Judiciary
of the U.S. House of Representatives
Defendants

Report and Recommendation

The plaintiff, Roger Liverman, Jr., ("Liverman"), a pro se plaintiff, filed this action pursuant to 28 U.S. C. §1361, alleging that Defendants Henry J. Hyde ("Hyde"), Chairman of the Committee on the Judiciary, and the Committee on the Judiciary of the United States House of Representatives ("Judiciary Committee") violated Plaintiff's First Amendment right to governmental redress of grievances and his Fourteenth Amendment Due Process right to be heard.

Procedural History

In September 1997, Plaintiff Liverman filed a pro se petition with the United States House of Representatives, which was referred to the Judiciary Committee. It is undisputed that the Committee has not responded to Liverman's petition. In seeking a

response from the Judiciary Committee, Liverman filed a Writ of Mandamus with this court in November 1998 (Case No. 2:98-CV-823G) ("1998 Writ"). Liverman claimed that the Committee's inaction violated his First Amendment rights and asked the court to "set a time and date" for a hearing to address his petition. In December 1998, Defendants Hyde and the Judiciary Committee both moved to dismiss the 1998 Writ. Subsequently, Liverman voluntarily moved to dismiss the 1998 Writ. The court granted Liverman's motion and dismissed the 1998 Writ without prejudice.

Then, on August 23, 1999, Liverman refiled this action pursuant to 28 U.S.C. § 1361 and Federal Rule of Civil Procedure 81(b). The case was assigned to United States District Court Judge Tena Campbell, who referred the matter to United States Magistrate Judge Samuel Alba pursuant to 28 U.S.C. § 636(b)(1) (B)[1].

In filing this Writ of Mandamus, Liverman has asserted that Defendants Hyde and the Judiciary Committee ("Defendants") have violated Plaintiffs First Amendment right to governmental redress of grievances and his Fourteenth Amendment Due Process right to be heard. Liverman also prays for the court to require Defendants to set a time and date for Liverman to petition the Judiciary Committee for Redress of Grievances and a Petition for Private Claim[2]

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[1] Initially, this case was referred to Magistrate Judge Alba according to 28 U.S.C. § 636 (c) for this court to order the entry of judgment. However, 28 U.S.C. § 636(c) requires that all parties consent to the jurisdiction of the magistrate judge and in this case only Plaintiff Liverman has consented to the jurisdiction of the magistrate judge. Therefore, Judge Campbell changed the order of reference to Judge Alba according to 28 U.S.C. § 636 (b)(1) (B).

[2] Liverman also requested oral argument on his motions before this court. However, the court has determined that oral argument would not add anything to the case and declines to hold

Having reviewed the pleadings and supporting memoranda filed by the parties, the court hereby issues the following Report and Recommendation regarding Defendants' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12 (b)(6).

Standard of Review

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint where plaintiff fails to "state a claim upon which relief can be granted." Fed. R. P. 12(b)(6). "The complaint should not be dismissed for failure to state a claim 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Hall v. Bellmon, 935 F.2.d 1106, 1009 (10th Cir. 1991) (quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)).

Furthermore, "[d]ismissal of a pro se complaint for failure to state a claim is proper only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend." Perkins v. Kansas Dept. of Corrections, 165 F.3d 803, 806 (10th Cir. 1999). "In determining whether dismissal is proper, we must accept the allegations of the complaint as true and we must construe those allegations, and any reasonable inferences that might be drawn from them, in the light most favorable to the plaintiff." Id. See also Hall, 935 F.2d 1109. In other words, "[d]ismissal for failure to state a claim is proper only when it is clear beyond doubt that the complaint, viewed most favorably to the

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a hearing pursuant to DUCivR 7-1(f), which provides that "requests for oral arguments on motions will be granted on good cause shown . . . otherwise, motions are to be submitted to and will be determined by the court on the basis of the written memoranda of the parties."

plaintiff, cannot be read to state a valid claim." Shaffer v. Saffle, 148 F. 3d 1180, 1181 (10th Cir. 1998) (citing Hall, 935 F.2d at 1109-10).

Where a complaint has been filed by a pro se litigant, the litigants's "pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." Id. (quoting Hall, 935 F. 2d at 1110). The Tenth Circuit has interpreted this rule to mean that if "the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements," Hall, 935 F.2d at 1110.

However, the Tenth Circuit has stated that " '[t]he broad reading of the plaintiff's complaint does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based. ... Nevertheless, conclusory allegations without supporting factual averments are insufficient to state a claim on which relief can be based ..." Riddle v. Mondragon, 83 F.3d 1197, 1202 (10th Cir. 1996) (citing Hall, 935 F.2d at 1110). In other words, when "analyzing the sufficiency of the plaintiff's complaint, the court need to accept as true only the plaintiff's well-pleaded factual contentions, not his conclusory allegations." Hall, 935 F.2d at 1110 (citing Dunn v White, 880 F.2d 1188, 1197 (10th Cir. 1989)).

Legal Analysis

This Court recommends that all of plaintiff's claims against the Defendants be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 12 (b)(6). Plaintiff has simply failed to state a claim upon which relief can be granted. In his pleadings, plaintiff has alleged that defendants violated the First Amendment

and the Due Process Clause of the Fourteenth Amendment in failing to hear and redress his grievances. The Supreme Court has held that "[t]he Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy." Minnesota State Board for Community Colleges v Knight, 465 U.S. 271, 283 (1984). The Court added, "Absent statutory restrictions, the state must be free to consult or not consult whomever it pleases."[3] Id. at 285. The Judiciary Committee is clearly a public body which makes decisions regarding policy. Plaintiff simply does not have a Constitutional right to be heard by the Judiciary Committee.

However, the Supreme Court in Knight stated, "Nothing in the First Amendment or in this Court's case law interpreting it suggests that the rights to speak, associate, and petition require governmental policymakers to listen or respond to individuals' communications on public issues." Id. at 285.

Other courts have ruled similarly. In Bi-Metallic Investment Co. v State Bd. of Equalization, the United States Supreme Court explained that the issue in the case was "whether all individuals have a constitutional right to be heard before a matter can be decided in which all are equally concerned . . ." 239 U.S. 441,445

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[3]Plaintiff contends that 2 U.S.C. § 1901 places a duty on Congress to hear his grievance. However, plaintiff has merely misunderstood the statute. Section 1901 is entitled "Private claims pending before Congress; taking of testimony" and states that "any committee of either House of Congress before which any private claim against the United States may at any time be pending, . . . may order testimony to be taken, . . ." 2 U.S.C. §1901. Clearly the statute does not give a right to have a grievance redressed before a House of Congress. Rather, the statute only allows a committee of a House of Congress to choose to have testimony taken by a mastery in chancery in private actions which are already pending before Congress. No right to be heard is inherent in the statute.

(1915). Then the Court held that there was no Constitutional right to be heard, stating, "The Constitution does not require all public acts to be done in town meeting or assembly of the whole. General statutes within the state power are passed that affect the person or property individuals, sometimes to the point of ruin, without giving them a chance to be heard." Id.

In addition, in Craft v McNulty, the plaintiff sued a United States Representative for failing to follow up on alleged wrong-doings of the Internal Revenue Service. 875 F. Supp. 121,122 (N.D.N.Y. 1995). The court in that case stated that the defendant Representative's action was "neither inappropriate nor actionable." Id. at 123 Similarly, in Richards v Harper, plaintiff sued a United States Representative for failing to assist him. 864 F.2d 85, 86 (9th Cir. 1988). The court ruled that the representative's "failure to assist [plaintiff] was neither inappropriate nor actionable." Id. at 88. See also Popovic v. United States, 997 F. Supp. 672, 679 (D. Maryland 1998)(determining that plaintiff "had no [due process] right not to have his case investigated by the Congressional Subcommittee . . . "); McDonough v Ney, 599 F. Supp. 679, 683 (D. Maine 1984)(finding that "Plaintiffs have alleged no act or omission or commission by these Federal defendants, except their failure to intervene, which was neither inappropriate nor actionable.")

The cases cited by plaintiff are inapposite. Although they do show that in some instances a party may have a right to notice and a hearing, those cases involve an established property right or liberty interest that is being rescinded. See e.g., Mathews v Eldridge, 424 U.S. 319, 333 (1976) (stating that "This Court has consistently held that some form of hearing is required before an individual is finally deprived of a property interest). In this case, plaintiff has not articulated any facts which establish that he is at risk of being

deprived of a viable property or liberty interest. As such, there are no facts before the court that would entitle him to notice and hearing. Furthermore, the cases relied on by plaintiff simply do not hold that an individual has a Constitutional right to a hearing before a committee of Congress for purposes of addressing a private claim.

Because plaintiff does not have a Constitutional right to be heard by a member or committee of Congress, the court finds that plaintiff has simply failed to assert a claim that is actionable.

Accordingly,

IT IS HEREBY RECOMMENDED that Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure be **GRANTED**, and that the case be **dismissed without prejudice**.

Copies of the foregoing Report and Recommendation are being mailed to the parties who are hereby notified of their right to object to the same. The parties are further notified that they must file any objections to the Report and Recommendation, with the clerk of the district court, pursuant to 28 U.S.C. § 636(b), within ten (10) days after receiving it. Failure to file objections may constitute a waiver of those objections on subsequent appellate review.

Dated this 15th day of January, 2000.

By the Court:
"s/ Samuel Alba"
Samuel Alba
United States Magistrate Judge